

EDMUND G. BROWN JR., Attorney General  
of the State of California  
JOSE R. GUERRERO, State Bar No. 97276  
Supervising Deputy Attorney General  
CATHERINE E. SANTILLAN  
Senior Legal Analyst  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
Telephone: (415) 703-5579  
Facsimile: (415) 703-5480

Attorneys for Complainant

**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. 1H 2006 470

JEFFREY LESTER BLACKWELL  
1859 Mayfair Drive E.  
Fresno CA 93703

**STATEMENT OF ISSUES**

Applicant/Respondent.

Complainant alleges:

**PARTIES**

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about August 7, 2006, the Respiratory Care Board of California, Department of Consumer Affairs received an application for a respiratory care practitioner license from Jeffrey Lester Blackwell (Respondent). On or about August 1, 2006, Jeffrey Lester Blackwell certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on November 21, 2007. On or about December 3, 2007, respondent requested a hearing.

///

///

JURISDICTION

3. This Statement of Issues is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.”

“(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).”

“(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.”

“(p) A pattern of substandard care.”

///

///

///

1           7.       Section 3732 of the Code states:

2           "(a) The board shall investigate an applicant for a license, before a license is  
3           issued, in order to determine whether or not the applicant has the qualifications required  
4           by this chapter.

5           "(b) The board may deny an application, or may order the issuance of a  
6           license with terms and conditions, for any of the causes specified in this chapter for  
7           suspension or revocation of a license, including, but not limited to, those causes  
8           specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

9           8.       Section 3750.5 of the Code states:

10          "In addition to any other grounds specified in this chapter, the board may  
11          deny, suspend, or revoke the license of any applicant or license holder who has done any  
12          of the following:

13          "(a) Obtained or possessed in violation of law, or except as directed by a  
14          licensed physician and surgeon, dentist, or podiatrist administered to himself or herself, or  
15          furnished or administered to another, any controlled substances as defined in Division 10  
16          (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug  
17          as defined in Article 7 (commencing with section 4210) of Chapter 9 of this code.

18          "(b) Used any controlled substance as defined in Division 10 (commencing  
19          with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in  
20          Article 7 (commencing with section 4210) of Chapter 9 of this code."

21          9.       Section 3752 of the Code states:

22          "A plea or verdict of guilty or a conviction following a plea of nolo  
23          contendere made to a charge of any offense which substantially relates to the  
24          qualifications, functions, or duties of a respiratory care practitioner is deemed to be  
25          a conviction within the meaning of this article. The board shall order the license  
26          suspended or revoked, or may decline to issue a license, when the time for appeal  
27          has elapsed, or the judgment of conviction has been affirmed on appeal or when an  
28          order granting probation is made suspending the imposition of sentence,

1       irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing  
2       the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or  
3       setting aside the verdict of guilty, or dismissing the accusation, information, or  
4       indictment.”

5               10.     Section 3752.5 of the Code states:

6               “For purposes of Division 1.5 (commencing with Section 475), and this  
7       chapter [the Respiratory Care Practice Act], a crime involving bodily injury or  
8       attempted bodily injury shall be considered a crime substantially related to the  
9       qualifications, functions, or duties of a respiratory care practitioner.”

10              11.     California Code of Regulations, title 16, section 1399.370, states:

11              “For the purposes of denial, suspension, or revocation of a license, a crime  
12       or act shall be considered to be substantially related to the qualifications, functions  
13       or duties of a respiratory care practitioner, if it evidences present or potential  
14       unfitness of a licensee to perform the functions authorized by his or her license or  
15       in a manner inconsistent with the public health, safety, or welfare. Such crimes or  
16       acts shall include but not be limited to those involving the following:

17              “(a) Violating or attempting to violate, directly or indirectly, or assisting or  
18       abetting the violation of or conspiring to violate any provision or term of the Act.”

19                               COST RECOVERY

20              12.     Section 3753.5, subdivision (a) of the Code states:

21              “In any order issued in resolution of a disciplinary proceeding before the  
22       board, the board or the administrative law judge may direct any practitioner or applicant  
23       found to have committed a violation or violations of law to pay to the board a sum not to  
24       exceed the costs of the investigation and prosecution of the case.”

25              13.     Section 3753.7 of the Code states:

26              “For purposes of the Respiratory Care Practice Act, costs of prosecution  
27       shall include attorney general or other prosecuting attorney fees, expert witness fees, and  
28       other administrative, filing, and service fees.”

1                   14.     Section 3753.1 of the Code states:

2                   "(a) An administrative disciplinary decision imposing terms of probation  
3 may include, among other things, a requirement that the licensee-probationer pay the  
4 monetary costs associated with monitoring the probation. "

5                   FIRST CAUSE FOR DENIAL OF APPLICATION

6                   (Pattern of substandard care)

7                   15.     Respondent's application is subject to denial under code section  
8 3750(p), [pattern of substandard care]. The circumstances are as follows:

9                   16.     From September 1, 2004 to May 4, 2006, respondent was employed  
10 at Madera Community Hospital (MCH) as a phlebotomist. On or about January 9, 2006,  
11 respondent collected a blood sample from a patient. Hospital policy required that the  
12 phlebotomist confirm the patient's identity by checking the order to draw blood with the  
13 armband worn by the patient. Respondent did not do this, and he drew blood from the  
14 wrong patient. MCH issued a written warning to respondent, and he was suspended three  
15 days. Respondent was notified that termination would result if a similar event occurred  
16 again.

17                  17.     On or about May 3, 2006, respondent did not confirm the patient's  
18 identity by checking the patient's armband with the order to draw blood, and he collected a  
19 blood sample from the wrong patient. He was terminated from employment.

20                  18.     Therefore, respondent's application is subject to denial based on his  
21 pattern of substandard care while employed as a phlebotomist.

22                  SECOND CAUSE FOR DENIAL OF APPLICATION

23                  (Convictions)

24                  19.     Respondent's application is subject to denial under sections 3750(d),  
25 3752 and 3752.5 in that he has two substantially related convictions. The circumstances  
26 are as follows:

27                  ///

28                  ///

1           2000 conviction: Penal Code section 245(a)(1), assault with a deadly weapon

2           20.     On or about February 7, 2000, respondent suspected A., a male  
3 individual, of throwing paint on respondent's wife's car. Respondent also believed that A.  
4 had thrown paint on respondent's car in a prior incident, but respondent did not report A.  
5 to the police. Respondent went to A.'s workplace and began punching and kicking him.  
6 A. did not attempt to fight back. When A.'s co-workers tried to approach respondent,  
7 respondent threatened them with a metal baseball bat. The victim had several injuries to  
8 his face, and abrasions on his right elbow and knee.

9           21.     On or about May 2, 2000, upon his plea of guilty, respondent was  
10 convicted of Penal Code section 245(a)(1), assault with a deadly weapon or force likely to  
11 produce great bodily injury, a misdemeanor. He was placed on one year probation and  
12 ordered to perform 114 hours of community service. On March 11, 2002, he submitted  
13 proof that he completed community service.

14           1993 conviction: Penal Code section 242, battery

15           22.     On or about September 27, 1992, respondent and his wife separated.  
16 Respondent was removed from the apartment lease for about one month, and did not  
17 reside with his wife. Respondent telephoned his wife to try to reconcile, and learned that  
18 she had a male visitor in the apartment. He drove to the apartment, pushed past his wife,  
19 and began punching and kicking the male visitor. Respondent's wife called the police, and  
20 respondent left the apartment.

21           23.     On or about January 11, 1993, respondent was convicted upon his  
22 plea of nolo contendere to violating Penal Code section 242, battery. Judgment was  
23 suspended for three years, and a conditional sentence was ordered for three years.

24           24.     Therefore, respondent's license application is subject to denial  
25 based on convictions for violating Penal Code sections 245(a)(1) and 242, which are  
26 substantially related to the practice of respiratory care.

27     ///

28     ///

1                                    THIRD CAUSE FOR DENIAL OF APPLICATION

2                                    (Corrupt Act; Drug Use)

3                    25.      Respondent's application is subject to denial under sections 3750(j),  
4                    3750.5(a) and 3750.5(b) in that he was discharged from the United States Air Force for  
5                    possession and use of marijuana. The circumstances are as follows:

6                    26.      On or about April 22, 1986, respondent enlisted in the United States  
7                    Air Force Reserve for a four year term. He was discharged April 28, 1988 due to  
8                    misconduct for drug abuse. The details are as follows:

9                    27.      On or about September 11, 1988, respondent was arrested on Kelly  
10                   Air Force Base for disorderly conduct and traffic violations including lack of insurance.  
11                   This incident led to a command-directed urinalysis test. On or about September 11, 1988,  
12                   respondent tested positive for marijuana and admitted he had used marijuana.

13                   28.      On or about November 14, 1988, respondent was discharged from  
14                   the United States Air Force with a general characterization without probation and  
15                   rehabilitation.

16                   29.      Therefore, respondent's application for licensure is subject to denial  
17                   based on his discharge from the United States Air Force due to use of marijuana, in  
18                   violation of code sections 3750(j) [corrupt act], 3750.5(a) [possession] and 3750.5(b) [use]  
19                   of a controlled substance, marijuana.

20                                    PRAYER

21                    WHEREFORE, Complainant requests that a hearing be held on the matters  
22                    herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

23                    1.      Denying the application of Jeffrey Lester Blackwell for a respiratory  
24                    care practitioner license;

25                    2.      Directing Jeffrey Lester Blackwell to pay the Respiratory Care  
26                    Board of California the costs of the investigation and enforcement of this case, and if  
27                    placed on probation, the costs of probation monitoring;

28                    ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3. Taking such other and further action as deemed necessary and proper.

DATED: January 15, 2008

Original signed by Liane Zimmerman for:  
STEPHANIE NUNEZ  
Executive Officer  
Respiratory Care Board of California  
Department of Consumer Affairs  
State of California  
Complainant

SF2007403387  
blackwell\_j\_soi.wpd